

STATE OF SOUTH CAROLINA

(Caption of Case)

State Universal Service Support of Basic Local
Service Included in a Bundled Service Offering or
Contract Offering

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2009 - 326 - C

(Please type or print)

Submitted by: Margaret M. Fox, EsquireSC Bar Number: 65418Address: McNair Law Firm, P. A.Telephone: 803-799-9800P. O. Box 11390Fax: 803-753-3219Columbia, SC 29211

Other: _____

Email: pfox@mcnair.net

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☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other: _____

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Margaret M. Fox

pfox@mcnair.net
T (803) 799-9800
F (803) 753-3219

February 17, 2010

Jocelyn Boyd
Interim Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Suite 100
Columbia, South Carolina 29210

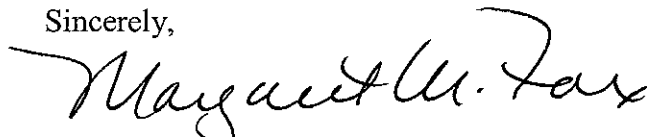
Re: State Universal Service Support of Basic Local
Service Included in a Bundled Service Offering
or Contract Offering
Docket No. 2009-326-C

Dear Ms. Boyd:

Enclosed for filing on behalf of the South Carolina Telephone Coalition
is a Brief in the above-referenced matter. By copy of this letter and certificate
of service all parties of record are receiving a copy of this Brief.

Thank you for your assistance.

Sincerely,



Margaret M. Fox

MMF:rwm
Enclosure

cc: Parties of Record

McNair Law Firm, P. A.
The Tower at 1301 Gervais
1301 Gervais Street, 11th Floor
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-326-C

In Re:)
State Universal Service Support of Basic)
Local Service Included in a Bundled)
Offering or Contract Offering)
_____)

**BRIEF OF THE
SOUTH CAROLINA TELEPHONE COALITION**

M. John Bowen, Jr.
Margaret M. Fox
McNair Law Firm, P. A.
Post Office Box 11390
Columbia, South Carolina 29211
Telephone : (803) 799-9800
Facsimile: (803) 376-2219
E-mail: jbowen@mcnair.net;
pfox@mcnair.net

ATTORNEYS FOR THE SOUTH
CAROLINA TELEPHONE COALITION

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THE PUBLIC SERVICE COMMISSION OF
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In Re:)	BRIEF OF THE
State Universal Service Support of Basic)	SOUTH CAROLINA
Local Service Included in a Bundled)	TELEPHONE COALITION
Offering or Contract Offering)	
_____)	

I. Introduction

The South Carolina Telephone Coalition ("SCTC") respectfully submits this brief, pursuant to S.C. Code Ann. Regs. § 103-851 and the Commission's directive at the hearing on this matter regarding the filing of briefs and proposed orders.

The issue before the Public Service Commission of South Carolina ("Commission") is whether to continue to provide universal service support to carriers of last resort for the provision of basic local exchange telephone service when it is provided as part of a bundled or contract service offering. Contrary to assertions made by parties seeking to change the way the State Universal Service Fund operates, this is not a new issue. The South Carolina General Assembly and the Commission have acted in the public interest in establishing policies and procedures, including guidelines for a State Universal Service Fund ("State USF"), to ensure the continued availability of affordable basic local exchange telephone service for all South Carolina citizens, including those living in the most rural and high-cost areas of the State. The Supreme Court of South Carolina has previously rejected challenges to the Commission's orders establishing and implementing the State USF, including challenges to the manner in which the Commission chose to size the State USF and to allow distributions from the State USF.

The public policy of ensuring access to affordable basic local exchange telephone service remains the same, regardless of whether a particular customer chooses to receive only basic local exchange telephone service or to receive that same service along with other services or pursuant to a contract. South Carolina consumers should not be denied the opportunity to subscribe to bundles and contract offerings simply because they live in a high-cost rural area where their carrier would not be able to recover the cost of providing basic local exchange telephone service without explicit support from the State USF. Likewise, a rural carrier should not be forced to choose between receiving the State USF support it needs to recover the cost of providing basic local service throughout its service area, or giving up that support in order to provide the bundles and contract offerings its customers increasingly desire and demand.

Changing the current operation of the State USF to cease support for basic local exchange service based on the relatively arbitrary and irrelevant factor of how the service is marketed and sold to customers would have a significant adverse impact on the public interest. Public policy at both the federal and state levels has dictated support for basic local exchange service in high-cost rural areas in the past, regardless of whether it is provided alone or in conjunction with other services, and nothing has changed. Granting the request of the petitioning carriers, who serve almost exclusively in lower-cost areas of the State, would significantly harm long-established universal service principles, and would provide petitioning carriers with an unwarranted competitive advantage and financial windfall. Withholding support for customers who subscribe to other services would be inconsistent with federal and state policy and practice, and such a change in policy would be contrary to the public interest. The current operation of the State USF, as approved by the Commission and affirmed in all respects by the Supreme Court of South Carolina, is working well for rural South Carolina consumers and should be maintained.

II. Procedural Background

The issue of whether State USF support should continue to be provided for basic local exchange telephone service included in bundles or contracts was raised by the South Carolina Cable Television Association ("SCCTA"), Comp South, tw telecom of south carolina, llc, and NuVox Communications, Inc. (collectively, the "CLECs") in Docket No. 1997-239-C, In Re Proceeding to Establish Guidelines for an Intrastate Universal Service Fund. In pleadings before the Commission in Docket No. 1997-239-C, CLECs have argued that the Commission should address the issue of whether State USF support should be provided for lines that are sold as part of bundles or contract offerings. See, e.g., Motion Requesting Review of Additional USF Issues, dated July 3, 2008. In the Spring of 2009, the Commission scheduled oral arguments on various motions pending in Docket No. 1997-239-C, including the motion by CLECs to review the question of support for lines sold as part of bundles or contract offerings. See Notice of Oral Arguments in Docket No. 1997-239-C, dated May 7, 2009.

In the meantime, the issue of State USF for basic local service included in bundles and contract offerings was raised in the course of discussions related to legislation being considered by the General Assembly during the 2009 legislative session. The legislation, known as the Customer Choice and Technology Investment Act of 2009 ("Act"), was subsequently codified as S.C. Code Ann. § 58-9-576(C). The Act allows local exchange carriers ("LECs") to opt into a relaxed form of regulation which essentially does away with the electing LEC's carrier of last resort obligation, i.e., the carrier would no longer have an obligation to provide basic local service to all residential and single-line business customers within its defined service area. To

ease this transition, the Act provides that the carrier must continue providing service to stand-alone basic residential lines that were in service prior to the LEC's election under the Act (the "grandfathered lines"). As part of its election, the electing LEC is required to phase out its State USF withdrawals, except that it may petition the Commission for continued support of the grandfathered lines that remain in service.

The General Assembly, in enacting the portion of Section 58-9-576(C) that allows electing carriers to continue to receive State USF funding for stand-alone basic residential lines, did not intend to suggest that State USF funding should be available only for stand-alone basic local service lines. The General Assembly clearly intended that operation of the State USF would not be changed or disrupted for non-electing carriers, expressly stating:

(10) For those LEC's that have not elected to have rates, terms, and conditions for their services determined pursuant to the plan described in this subsection, the Interim LEC fund and state USF shall continue to operate in accordance with Sections 58-9-280(E), (L), and (M).

[and]

(11) For those LEC's that have not elected to operate under this section, nothing contained in this section or any subsection shall affect the current administration of the state USF nor does any provision thereof constitute a determination or suggestion that only stand-alone basic residential lines should be entitled to support from the state USF.

(Emphasis added.)

As part of a compromise to allow the proposed legislation to proceed, the parties agreed to ask the Commission to prioritize the issue of whether basic local service should receive State USF support when it is included in a bundled service offering or contract offering, and to address the issue separate and apart from and prior to any other pending issues. See Letter from C. Dukes Scott to Charles L.A. Terreni, dated May 28, 2009, in Docket No. 1997-239-C ("ORS

Letter”). The Commission granted the request and held the other pending issues in abeyance. See Commission Directive dated June 10, 2009, in Docket No. 1997-239-C. Following a status conference, Hearing Officer F. David Butler issued a directive dated July 31, 2009 which, among other procedural rulings, established a new docket, Docket No. 2009-326-C, to consider the issue of whether basic local service should receive State USF support when it is included in a bundled service offering or contract offering.

III. Background and History of the State USF

Simply put, universal service is the concept that everyone, regardless of where they live, should have access to basic local telephone service at affordable rates, and that rates and services should be comparable in rural and urban areas. The challenge in achieving this laudable objective is that service in densely populated urban areas is relatively inexpensive to provide, while service in sparsely populated rural areas can be very costly. See Hearing Exhibit No. 5 (The average monthly cost of providing service in South Carolina ranges from \$17.81 where there are more than 10,000 households per square mile, up to \$114.97 for areas with 0-5 households per square mile). Maintaining rate parity between urban and rural areas requires explicit public funding to support the higher costs of serving rural areas.¹ Both the Federal USF and State USF have been designed to provide the explicit funding necessary to maintain reasonably comparable rates between urban and rural areas.

Unlike other public utility services, telecommunications service is carried over a two-way network, and the service becomes more valuable as more people are connected to the network. In recognition of this public good, both Congress and the South Carolina General Assembly have

¹ Historically, support for high-cost areas was provided implicitly by pricing some services (e.g., access charges) higher than their cost. The Federal Telecommunications Act of 1996 opened local telecommunications markets to competition, rendering such implicit support unsustainable. Indeed, Section 254(e) of the 1996 Act states that universal service support should be explicit.

codified policies to preserve and advance universal service. Section 254 of the Federal Telecommunications Act of 1996 sets forth universal service principles, the first of which is that quality services should be available at just, reasonable, and affordable rates. 47 U.S.C. § 254(b)(1). Another basic principle is that customers in rural and high-cost areas should have access to telecommunications and information services, including advanced services, that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. § 254(b)(3).

Section 254 also provides that there should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service, and that all providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. 47 U.S.C. § 254(b)(4)-(5).

On the state side, S.C. Code Ann. § 58-9-280(E) provides in part: "In continuing South Carolina's commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort."

South Carolina law defines universal service as "the providing of basic local exchange telephone service, at affordable rates, upon reasonable request, to all residential and single-line business customers within a defined service area." S.C. Code Ann. § 58-9-10(16). Basic local exchange telephone service means, "for residential and single-line business customers, access to basic voice grade local service with touchtone, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to

operator services, and one annual local directory listing (white pages or equivalent).” S.C. Code Ann. § 58-9-10(9).

“Carrier of last resort” or COLR is defined in state law as “a facilities-based local exchange carrier . . . which has the obligation to provide basic local exchange telephone service, upon reasonable request, to all residential and single-line business customers within a defined service area.” S.C. Code Ann. § 58-9-10(10).

With this statutory mandate, the Commission held three (3) rounds of hearings in Docket No. 1997-239-C to establish and begin implementation of the State USF. The first proceeding began on August 4, 1997. After a hearing, the Commission adopted guidelines, as required by S.C. Code Ann. § 58-9-280(E), and established the initial size of the fund. See Commission Order Nos. 97-753, 97-942, and 98-201.

In its second proceeding, beginning in November 1997, the Commission primarily addressed the selection of appropriate cost model(s) and methodologies and the sizing of the State USF. See Commission Order No. 98-322. In compliance with Federal Communications Commission (“FCC”) requirements, the Commission adopted a forward-looking cost proxy model for non-rural companies and United Telephone Company of the Carolinas, Inc. (now known as CenturyLink), and adopted an embedded cost methodology for all other rural LECs. Id.

In the third round of hearings held in July 2000, the Commission addressed all remaining issues relating to the State USF and ordered implementation of the State USF beginning October 1, 2001. See Commission Order No. 2001-419.

In Order No. 2001-419, the Commission made numerous findings, including important public interest and policy findings, with respect to the State USF. The Commission found that

implementation of the State USF is necessary to remove implicit support from rates and make the funding explicit, and that this will ensure the continuation of universal service to all residential and single-line business customers in South Carolina. Order No. 2001-419 at 32. The Commission found that the current system of implicit support for basic local telephone service built into rates for other services could not be sustained in a competitive environment, and that erosion of the implicit support due to natural competitive forces will adversely impact the availability of affordable basic local telephone service to all South Carolina citizens. Id. at 32.

Rather than making an immediate and dramatic shift from a system of implicit to explicit support, the Commission fulfilled its statutory duty and addressed universal service concerns by ordering a phased-in implementation of the State USF with the first phase effective October 1, 2001. Id. at 33-36. The operation of the State USF and the phase-in from implicit to explicit support are revenue neutral to the ILECs. Id. at 42-43. Before an ILEC may receive any funding from the State USF, that ILEC must reduce rates containing implicit support, dollar for dollar. Order No. 2001-419 at 42. Since access charges were a prime source of the implicit subsidy for basic local exchange services, the Commission initially approved a reduction in access charges by fifty percent (50%) and allowed the recovery of those amounts from the State USF. Id. at 33. In addition to making a portion of the universal service support explicit, the Commission found that this reduction would bring South Carolina's intrastate access charges more in line with other states in the southeast region and should result in considerable savings to South Carolina consumers. Id.

The Commission also included in the State USF maximum state funding for Lifeline service for low-income consumers. Id. at 35. The Lifeline program allows low-income consumers to have access to basic local exchange service at greatly reduced rates, with \$13.50

per month in discounts provided by the ILEC directly to the low-income customer and recovered through state and federal funding. See, e.g., 47 C.F.R. §§ 54.400-54.415 (2008).

The Commission provided for further phases related to additional funding of the State USF, but held that any LEC applying for such funding from the State USF must file detailed cost data with the Commission clearly demonstrating that implicit support exists in the rates that are proposed to be reduced. Order No. 2001-419 at 35-36.

Regarding contributions to the fund, State law provides that all telecommunications companies providing telecommunications services in South Carolina are required to contribute to the State USF as determined by the Commission. S.C. Code Ann. § 58-9-280(E)(2). In the third proceeding, the Commission found that an explicit uniform percentage surcharge on end user retail revenues is an efficient, fair and competitively neutral method to collect universal service funding, and meets the 1996 Act's requirement to make universal service support explicit. Order No. 2001-419 at 39-40.

The Commission found that the State USF will benefit rural areas by preserving and advancing universal service, and further found that, if a mechanism to ensure the continued provision of affordable basic local exchange telephone service to all citizens were not put into place, customers in rural areas would be most impacted. Id. at 44. Without a USF mechanism, competition would drive prices to cost, and costs are generally much higher for rural customers than for urban customers. Id.

Commission Order No. 2001-419 instructed the Commission Staff to modify the Administrative Procedures as needed to be consistent with the Commission's rulings. The Staff modified both the State USF Guidelines and the State USF Administrative Procedures to reflect

all changes ordered by the Commission since its original adoption of guidelines. See Commission Order No. 2001-996 (approving and attaching final documents).

SCCTA and Southeastern Competitive Carriers Association (“SECCA,” a predecessor organization to CompSouth)² appealed the Commission’s orders establishing and implementing the State USF on numerous grounds. Specifically, SCCTA and SECCA argued on appeal that the Commission had not properly sized the State USF because “the cost studies filed in this case include costs for the entire network, not just the cost of ‘providing basic local exchange services.’” See SCCTA and SECCA Final Brief before the Supreme Court of South Carolina in Office of Regulatory Staff v. Public Service Commission of South Carolina, at p. 24.³ In other words, CLECs argued then that the inclusion of other services in conjunction with basic local service should impact the cost allocated to local service. In the instant case, CLECs are arguing that if other services are provided in conjunction with basic service, the Commission should completely eliminate State USF funding. This is simply a repackaging of the same old self-serving argument that the Commission rejected nearly a decade ago. The Supreme Court not only affirmed the Commission’s orders in all respects, but praised the Commission, stating that its orders were “meticulous in their factual determinations and decisions regarding the appropriate methods for implementing the State USF,” and that the Commission’s order examining and approving cost methodologies was “especially illustrative of the Commission’s decision-making process.” Office of Regulatory Staff v. Public Service Commission of South Carolina, 374 S.C. 46, 54, 647 S.E2d 223, 227 (2007).

² See Tr. at 267-268.

³ The Consumer Advocate for the State of South Carolina also appealed the Commission’s orders, and the Office of Regulatory Staff was substituted as a party when it assumed the duties of the Consumer Advocate with respect to Commission matters pursuant to Act No. 175 of 2004. See S.C. Code Ann. § 37-6-606(C).

Universal service exists today, thanks in large part to the South Carolina General Assembly's and the Commission's actions in establishing the State USF and allowing carriers to reduce implicit support contained in rates for intrastate access and other services and to recover these revenues from an explicit funding mechanism. This is exactly what Congress intended by requiring specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service. However, it is important to understand that universal service is not something you achieve and forget. The capital cost associated with deploying a network is typically recovered over a long period of time. In addition, there are higher ongoing operating costs in remote rural areas, and the network must be continually upgraded. Thus, if funding were eliminated or drastically reduced, universal service would soon fail.

IV. Issues

1. Who Bears the Burden of Proof in this Proceeding?
2. Should the State USF Continue to Operate so as to Provide Support to Carriers of Last Resort for the Provision of Basic Local Exchange Telephone Service, Regardless of Whether the Basic Local Service is Provided as Part of a Bundled or Contract Offering or on a Stand-Alone Basis?

V. Argument

1. CLECs Have the Burden of Proof in this Proceeding

As stated above, CLECs raised this issue before the Commission in Docket No. 1997-239-C. The Commission scheduled oral arguments on pending motions, including CLECs' motion to address this and other issues. In the course of legislative discussions, the parties agreed to ask the Commission to address the instant issue on an expedited basis, prior to considering any other issues pending in Docket No. 1997-239-C. As part of that agreement, the

Commission was asked to cancel the scheduled oral argument on the motions and proceed to address the issue of bundled and contract offerings. See ORS Letter.

Clearly, this issue was raised by the CLECs, and they are the moving parties with respect to this issue. The other parties' agreement to ask the Commission to consider the CLECs' issue on an expedited basis does not change the fact that it is the CLECs' issue. In fact, in its letter asking the Commission to proceed with addressing the issue, ORS specifically referenced the issue as having been raised by the CLECs in their "Motion Requesting Review of USF Issues" dated July 3, 2008. CLECs are the moving parties and, therefore, bear the burden of proof with respect to this issue.

The fact that the parties agreed from a procedural standpoint that the issue should be heard on an expedited basis does not change the burden of proof. For example, if a person were accused of a crime, his agreement that the matter should be heard expeditiously by a jury of his peers does not change the fact that the prosecutor bears the burden of proving the defendant's guilt beyond a reasonable doubt. The same is true here. The fact that the parties agreed to ask the Commission to consider the issue on an expedited basis does not change the fact that it is the CLECs' issue and that the CLECs bear the burden of proof.

2. Carriers of Last Resort Who Provide Basic Local Exchange Telephone Service Should Receive State Universal Service Support When the Basic Local Service is Included in a Bundled Service Offering or Contract Offering

- (a) It is in the Public Interest to Provide State USF Support for Basic Local Service, Regardless of How it is Marketed and Sold.

It is in the public interest to ensure that all South Carolina citizens have access to affordable basic local exchange telephone service, and that rural consumers have access to services comparable to those available in urban areas, at comparable rates. This public interest

remains the same, regardless of whether customers choose to receive only basic local exchange telephone service or to receive that same service along with other services, and regardless of whether they choose to purchase services pursuant to a tariff or a contract.

Universal service funding is needed in order to continue “South Carolina’s commitment to universally available basic local exchange telephone service at affordable rates” S.C. Code Ann. § 58-9-280(E). Carriers are eligible to receive State USF if they undertake a carrier of last resort (“COLR”) obligation to provide basic local service to all customers making a reasonable request for such service within a designated service area. See S.C. Code Ann. § 58-9-280(E) (“ . . . the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort.” (Emphasis added.)

Basic local service is basic local service, regardless of how it is marketed and sold. The underlying service is exactly the same, just as french fries sold separately are the exact same french fries that can be purchased as part of a value meal at a fast food restaurant. See Tr. at 37. A carrier that undertakes an obligation to provide that service upon reasonable request at affordable rates to all customers within a designated service area must be afforded the opportunity to recover its cost of doing so. South Carolina consumers should not be denied the opportunity to subscribe to bundles and contracts simply because they live in an area served by a rural telephone company. Likewise, rural carriers should not be placed in the untenable position of having to choose between recovering their cost of providing high-cost basic local service and providing bundled and contract service offerings to their customers.

In addition to ensuring the preservation and enhancement of universal service, the Federal Telecommunications Act of 1996 focused on bringing the benefits of competition – a wider choice of services at lower prices – to local telecommunications services. See Tr. at 198.

If the petitioners in this case are successful in limiting a rural carrier's ability to offer service bundles and contracts, consumers would be denied bundled service offerings from an otherwise viable competitor, and the petitioners would likely be able to charge higher prices for their service bundles. Tr. at 199. Such a result would violate both the universal service and pro-competitive goals of the 1996 Act.

(b) The Bundling Statute Does Not Require a Different Result.

The statute addressing bundles and contracts, S.C. Code Ann. § 58-9-285, does not require a different State USF treatment for basic local service included in bundles and contracts. The statute does not deregulate access lines as argued by the CLECs, but only prohibits the Commission from imposing requirements or otherwise regulating bundled and contract service offerings. S.C. Code Ann. § 58-9-285(B). Thus, while the Commission cannot place requirements on the service offering itself, the Commission retains authority to regulate the underlying basic local exchange telephone service, i.e., the access line. See, e.g., Tr. at 8. In this regard, the bundling statute is very clear that companies must continue to maintain stand-alone tariffs for basic local exchange telephone service even when they are offering bundled or contract services. See S.C. Code Ann. § 58-9-285(A)(1)(a)(iii) (one of the requirements of a bundled offering is that "the qualifying LEC has a tariffed flat-rated local exchange service offering for residential customers and for single-line business customers on file with the commission that provides access to the services and functionalities set forth in Section 58-9-10(9) [i.e., basic local exchange telephone service]."). This means the company retains its COLR obligation and must stand ready to serve the customer upon request with basic local exchange telephone service on a stand-alone basis at affordable (Commission-approved tariff)

rates. Thus, the basis for providing State USF support for the underlying access line remains the same.

The question of whether the customer subscribes to a bundle of services or just basic local exchange service is not relevant to the issue of receipt of State USF. The underlying service is the same, and meets the definition of basic local exchange telephone service in S.C. Code Ann. § 58-9-10(9), regardless of whether or not the customer subscribes to other services. See Tr. at 29, 97-98, 111-112. A carrier of last resort is eligible to receive State USF because the carrier stands ready to serve the customer with basic local service and must maintain the network, regardless of whether the customer subscribes to other services. Because the carrier is required to maintain a stand-alone tariff (i.e., continues to be a COLR with respect to that customer), the customer could drop the bundle of services at any time and take only the stand-alone basic local exchange service. The carrier has an obligation to maintain the line to the home and to provide basic local exchange service at affordable (below-cost) rates upon request (\$14.35 per month for residential service for most ILECs), regardless of what other services the customer may subscribe to. Contract and bundled service offerings are merely marketing tools and pricing conventions; they do not change the nature of the basic local service or the underlying obligation to serve the customer.

Any suggestion that the bundling statute somehow deregulates lines and, therefore, takes regulatory authority away from the Commission with respect to providing State USF support for basic local service included as part of a bundled or contract service offering is completely unfounded. The bundling statute expressly provides: “Nothing in this section affects the commission’s jurisdiction over distributions from the USF pursuant to Section 58-9-280(E).” S.C. Code Ann. § 58-9-285(C) (emphasis added). This indicates a clear legislative intent that the

bundling statute would not disrupt the operation of the State USF and that the Commission would retain jurisdiction over State USF distributions notwithstanding any language in the bundling act.

- (c) Continuing State USF Support for Basic Local Service Regardless of How it is Marketed and Sold is Consistent with Prior Commission Decisions and with the Supreme Court's Ruling.

Again, this issue is not new. The Supreme Court of South Carolina affirmed the Commission's decisions regarding cost methodologies to determine the monthly cost of service for ILECs, which included the Commission's determination that it was appropriate to allocate all of the direct cost of the local loop to basic local exchange telephone service, and to allocate the joint and common costs across the various services that use the network. Specific arguments were made by some parties that the Commission should have taken into account other services that are provided over the basic line.⁴ The Commission, the Circuit Court, and the Supreme Court all found that the Commission had properly allocated the costs of the network.

CLECs' argument here is just another iteration of those old arguments. CLECs claim their argument is new because the Supreme Court appeal pre-dated the bundling statute. In fact, it is the same or a very similar argument, because it is an attempt to distinguish between customers who subscribe to basic local service only and those who subscribe to other services in addition to the basic local service, and to treat those customers differently for State USF purposes.

⁴ The South Carolina Cable Television Association and Southeastern Competitive Carriers Association argued in part that "the USF established by the Commission fails to match costs and revenues in violation of Section 58-9-280(E)." This argument essentially was that the Commission did not isolate the cost of providing only basic local exchange telephone service by deducting revenues received by the ILEC from the provision of services other than the basic local exchange telephone service. See Joint Final Brief of SCCTA and SECCA in Office of Regulatory Staff v. S.C. Public Service Commission (Consolidated appeal of Case Nos. 01-CP-404080; 02-CP-40-0072; 01-CP-40-4211, and 02-CP-40-0073 before the Supreme Court of South Carolina).

The General Assembly saw fit to provide State USF support to COLRs who provide basic local exchange telephone service. The Legislature could easily have limited support to COLRs who provide stand-alone basic service, but it did not, and, in fact to do so would have been contrary to state and federal policy because it would have failed to adequately preserve and advance universal service. There have always been “bundles” in the sense that consumers have subscribed to multiple services like call waiting, call forwarding, caller ID, long distance packages, etc., and it is a rare customer who takes only basic local exchange telephone service without any additional features or services. See Tr. at 302. Prior to the bundling statute, companies typically provided for combinations or bundles of services in their respective tariffs. See Tr. at 338. The Commission has always recognized that customers may subscribe to more than just basic local service and, in fact, took this into account in approving cost models and methodologies to size the State USF. Both the Commission and the Supreme Court found that the cost models and methodologies approved by the Commission to size the State USF properly allocated the cost of the network among the various services that are provided over the network and properly isolated the cost of providing basic local service. See Commission Order No. 98-322 at 68-69; Office of Regulatory Staff v. Public Service Commission of South Carolina, 374 S.C. 46, 64, 647 S.E.2d 223, 232-233 (2007) (“There is substantial evidence in the record showing that the Commission did allocate joint and common costs to different services and did isolate the cost of providing basic local service.”)

In fact, as Windstream witness William Kreutz pointed out in his testimony, allowing State USF support for basic local service included in bundles is consistent with the Commission’s prior decision not to distinguish between primary and secondary lines for purposes of State USF support. See Tr. at 109-110, 121-123; Commission Order No. 2001-419

at p. 43 (“In rural areas, this could mean the difference between a customer having or not having a second line (internet access, etc.)”). At the time the Commission made its decision to provide support for secondary lines, most residential customers received internet access over their secondary lines. See Tr. at 122. Today, many customers receive internet access through various bundles that include high-speed internet service along with the traditional voice line. See Tr. at 121-123. At a time when federal and state policy are strongly encouraging broadband access and use, a policy to cut State USF funding for basic local service that is bundled with high-speed internet access would undercut the objectives of state and federal broadband policy.

(d) Continuing State USF Support for Basic Local Service Included in Bundles and Contracts is Consistent with Federal Policies and with the Operation of the Federal USF.

State law requires that the State USF be “consistent with applicable federal policies” and “not inconsistent with applicable federal law.” S.C. Code Ann. § 58-9-280(E). The Federal USF does not exclude high-cost funding for basic local service that is included in bundles and contracts. See Tr. at 29, 112. In fact, the FCC has acknowledged that “the network is an integrated facility that may be used to provide both supported and non-supported services,” and refused to carve out or deny federal high cost USF support to carriers offering advanced services using the same facilities. See Tr. at 361-362, quoting In the Matter of Federal-State Joint Board on Universal Service, Order and Order on Reconsideration, CC Docket No. 96-45 at ¶13 (rel. July 14, 2003).

(e) Continuing State USF Support for Basic Local Service Included in Bundled and Contract Service Offerings is Consistent with the Statutes and Guidelines Addressing Sizing of the State USF.

CLECs argue that one reason bundled services should not be eligible for USF is because USF is sized based on the cost of providing basic local service minus the maximum amount the

company can charge, and if the basic service is in a bundle there is no "maximum amount" the company can charge. The truth is that, as long as the company is required to maintain a stand-alone tariff for basic local service (as it is in the bundling statute), that is the maximum amount it can charge. As Mr. Oliver explained in his testimony:

By definition, customers buy bundles to save money. They expect discounts off stand-alone prices. If an individual service could be purchased at a lower price on a stand-alone basis, customers would simply buy the stand-alone services individually, or not include a particular service in their bundle. Bundles offer customers a convenient package of services at prices lower than they would pay for individual stand-alone services.

Tr. at 287.

Furthermore, as Ms. Hipp testified, ORS, as the Administrator of the State USF, imputes the stand-alone basic local service tariff rate to a bundle that includes basic local service. Tr. at 371. In fact, this is exactly what is required by the State USF Guidelines adopted by the Commission. Section 11 of the State USF Guidelines (Attachment A to Commission Order No. 2001-996, at p. 9) provides in part:

Until such time as the Commission conducts hearings to establish appropriate maximum rates, the maximum rates for determining universal service support shall be deemed to be the COLR's tariffed rates for residential and single-line business services.

(Emphasis added.) Thus, there is a maximum rate that can be charged for basic local service included in a bundled or contract service offering, and it is the tariffed rate for stand-alone basic local service.

In any event, the maximum amount a COLR can charge for basic local service is used only in calculating the theoretical maximum size of the fund, which was accomplished prior to implementation of the State USF in October 2001. See Tr. at 283-284. As explained above, the Commission sized the State USF based on the difference between the cost of providing basic

local service and the maximum amount the COLR can charge for that service. See Tr. at 284; S.C. Code Ann. § 58-9-280(E)(4); State USF Guidelines (attached to Order No. 2001-996) at Section 9. This established the theoretical maximum size of the fund for that COLR, or the amount that was needed to cover the COLR's costs. Tr. at 284; State USF Guidelines at Section 9. This amount is recovered through a combination of implicit support in other rates and State USF. Tr. at 284. The federal Telecommunications Act of 1996 expressed a policy of moving this support out of rates and into explicit funding mechanisms like the State USF. See Tr. at 284; 47 U.S.C. §§ 254(b)(5), 254(e). Through the State USF, COLRs must identify and remove implicit support in other rates before they can draw State USF. See Tr. at 284; Order No. 2001-419 at 35. In other words, a COLR must first reduce its revenues by \$1.00 for every \$1.00 it draws from the State USF. The Commission has had extensive, exhaustive hearings to review and approve cost filings before approving requests for State USF funding. See Tr. at 284; see generally proceedings in Docket No. 1997-239-C. These are not new dollars for the COLR, but simply represent a shift from implicit support to explicit funding. See Tr. at 284. Thus, the maximum amount that a company can charge for basic local service, while being relevant to the calculation of the theoretical maximum amount a company could request, has no real bearing on actual State USF distributions. See Tr. at 284; Order No. 419 at 35-36 (describing phase-in approach); State USF Guidelines at Section 9. Actual distributions represent a dollar-for-dollar (revenue-neutral) replacement of the amount of revenue that is lost when a rate that contains implicit support is reduced. Tr. at 284. Today, in fact, COLRs are actually drawing less than 15% of the theoretical maximum size of the State USF, and that percentage is shrinking. See Tr. at 284-285, 300.

Finally, CLECs' argument on this point is self-serving. By suggesting that ILECs can charge "whatever they want" for basic local service included in a bundle, CLECs are really suggesting one of two possible scenarios. First, the ILEC could charge an amount sufficient to cover the cost of providing the basic local exchange service, in which case the ILEC's bundled offering would be priced well above similar offerings by CLECs that do not have an obligation to serve all customers and, therefore, do not have the correspondingly high costs that rural LECs have. Second, the ILEC could continue to provide the basic local service portion of the bundle at affordable below-cost rates, as it does today, and make up the difference by charging higher rates for its other services. In either case, the ILEC would be forced to offer bundles at prices that are significantly higher than its competitors' prices. The ILEC would not stay in business long under either scenario.

CLECs' counsel pointed out numerous times during the course of the hearing that ILECs also have the "option" or "alternative" of simply giving up their COLR obligation by electing regulation under new Section 58-9-576(C). As Ms. Prockish of CenturyLink responded, "I fail to see how those options would benefit the rural customer." Tr. at 76. Likewise, when asked if the rural carriers had the option of giving up their carrier of last resort obligation, SCTC witness Glenn Brown responded:

That's an option, but, boy, that would not be a very palatable option to most of the rural carrier people that I know. . . . [Y]ou're talking about companies, you know, many of them that are run by the third or fourth generation of the same family, that have been in that community for . . . 100 years or longer, that are parts of that community. They really care about delivering high-quality, advanced services. I don't think you're going to find people like that walking away from a commitment they've made not just to this Commission but to their communities that they're there to serve. . . . It would be a sad day, if that was the only choice they had.

Tr. at 211.

Ultimately, that seems to be the CLECs' goal – Either to force ILECs to offer non-competitive products, or to force ILECs to give up their carrier of last resort obligation and provide services only in those areas where they can make a business case for doing so (i.e., in the same more-densely-populated and lower-cost areas served by CLECs, which represent a small portion of the total service area in South Carolina). Either of these results would harm rural customers, either by forcing them to pay higher prices or by leaving them without a carrier willing to incur the high cost of serving them. These scenarios would force a competitive business model on the carriers of last resort to the detriment of South Carolina consumers and to the benefit of the CLECs' bottom lines. This is precisely what State USF was designed to prevent.

(f) Continuing Support for Basic Local Service Included in Bundles and Contracts Will Not Increase the Size of the State USF.

CLECs have tried to characterize this proceeding as one that would “expand” the State USF to “deregulated services,” i.e., to bundles and contracts. That is simply not true. As numerous witnesses pointed out, the State USF was specifically designed by the Commission to fund only basic local exchange service, and that is all it actually supports. Tr. at 92-93, 147, 301, 373. What is at stake is not an expansion of the fund, or even an expansion of the services that are eligible to receive support. It is merely an affirmation of the policy that COLRs continue to be entitled to receive State USF support for the basic local exchange telephone service they provide, regardless of how that service is marketed and sold or to what other services the end user may subscribe. That was the case when the State USF was established and implemented, it is the case today, and it should continue to be the case.

The Commission should reject the CLECs' arguments and consider what is in the interest of South Carolina's consumers: Continued access to quality services at just, reasonable, and

affordable rates; and continued access for customers in rural and high-cost areas to telecommunications and information services, including advanced services, that are reasonably comparable and at rates that are reasonably comparable to those provided in urban areas. The South Carolina General Assembly and the Commission have done so much to ensure universal service for all South Carolina citizens. The Commission should not let competitive carriers with a financial interest in gaining a competitive advantage dictate a change in the State USF that would be harmful to South Carolina's citizens.

VI. Conclusion

For the reasons set forth above, the Commission should reaffirm that COLRs are eligible for State USF for the provision of basic local exchange telephone service, regardless of whether the basic local service is provided alone or as part of a bundled or contract service offering.

The South Carolina General Assembly, in the bundling statute, expressly stated that nothing in the statute would affect the Commission's jurisdiction over distributions from the State USF. S.C. Code Ann. § 58-9-285(C). Later, in enacting the Customer Choice and Technology Investment Act of 2009, the General Assembly clearly stated its intent that operation of the State USF would not be changed or disrupted for non-electing carriers, and that the language of the Act should not be considered a determination that only stand-alone basic residential lines should be entitled to support from the State USF. S.C. Code Ann. § 58-9-576(C)(10)-(11).

The conclusion that basic local exchange telephone service is eligible for State USF regardless of how the service is marketed or sold will continue the Commission's efforts on behalf of South Carolina citizens to preserve and advance universal service in South Carolina. Such a determination is:

(1) consistent with South Carolina law and prior Commission decisions, including (a) S.C. Code Ann. 58-9-280(E) (requiring the Commission to establish the State USF); (b) the Commission's prior orders, particularly Order No. 2001-419, sizing and establishing the State USF in the manner in which it currently operates (i.e., in a revenue-neutral manner, allowing companies to reduce rates that contain implicit support and to draw State USF on a dollar-for-dollar basis so that implicit support becomes explicit); and (c) the Supreme Court's decision in Office of Regulatory Staff v. Public Service Commission of South Carolina, 374 S.C. 46, 647 S.E.2d 223 (2007), which affirmed the Commission's State USF orders in all substantive respects and, in fact, commended the Commission for its "meticulous . . . factual determinations and decisions regarding the appropriate methods for implementing the State USF";

(2) consistent with federal law, policy, and procedure, as specifically required by State law. See Tr. At 29, 112 (the federal USF does not exclude high-cost funding for basic local service that is included in bundles and contracts); S.C. Code Ann. 58-9-280(E) (requiring that the State USF be "consistent with applicable federal policies" and "not inconsistent with applicable federal law"); see also 47 U.S.C. § 254(b)(1)-(2) (federal policies require that quality services be available at just, reasonable, and affordable rates, and that customers in rural and high-cost areas should have access to telecommunications and information services, including advanced services, that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas); 47 U.S.C. § 254(b)(4)-(5) (federal policy also provides that there should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service, and that all providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service); and

(3) in the best interest of South Carolina's citizens because it will continue the Commission's commitment, in keeping with the South Carolina General Assembly's directive, to ensure the continued availability of affordable basic local exchange telephone service for all South Carolina consumers.

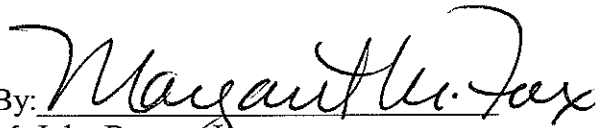
A finding to the contrary (i.e., accepting CLECs' position that basic local service provided in a bundle or by contract is not eligible for State USF) would be harmful to consumers, because it would lead to one or more of the following:

(1) Higher prices for consumers, particularly in rural areas (see, e.g., Tr. at 32, 175-176, 198-199, 295-296, 307-308);

(2) Limited availability of bundles and contract offerings and, therefore, higher prices for the remaining options available to consumers (see, e.g., Tr. at 32-33, 113, 175-176, 198-199, 295-296, 307-308); and/or

(3) Possible loss of service due to a lack of carriers of last resort willing and able to serve high-cost rural areas in South Carolina (see, e.g., Tr. at 32, 198-199, 211, 307-308).

Respectfully Submitted,

By: 

M. John Bowen, Jr.

Margaret M. Fox

McNair Law Firm, P. A.

Post Office Box 11390

Columbia, South Carolina 29211

Telephone : (803) 799-9800

Facsimile: (803) 376-2219

E-mail: jbowen@mcnair.net;

pfox@mcnair.net

ATTORNEYS FOR THE SOUTH
CAROLINA TELEPHONE COALITION

February 17, 2010

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

DOCKET NO. 2009-326-C

IN RE: State Universal Service Support of Basic Local)
 Service Included in a Bundled Service Offering)
 or Contract Offering)
 _____)

**CERTIFICATE
OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the attached Brief in the above-referenced matter to the persons named below by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below.

Patrick W. Turner, Esquire
AT&T South Carolina
Post Office Box 752
Columbia, South Carolina 29202

Steven W. Hamm, Esquire
Richardson Plowden and Robinson, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205

Bonnie D. Shealy, Esquire
Frank R. Ellerbe, III, Esquire
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, South Carolina 29202

John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202

William R Atkinson
Sprint Communications Company L. P.
3100 Cumberland Circle
Atlanta, Georgia 30339

Burnet R. Maybank III, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29202

Susan S. Masterton, Esquire
United Telephone Company of the
Carolinas d/b/a Embarq
1313 Blair Stone Road
Tallahassee, Florida 32301

Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

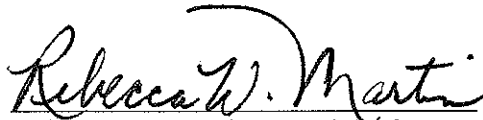
Zel Gilbert
Director, External Affairs
Embarq Corporation
1122 Lady Street, Suite 1050
Columbia, South Carolina 29201

Benjamin P. Mustian, Esquire
John M.S. Hoefer, Esquire
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, South Carolina 29202

Thomas J. Navin, Esquire
Wiley Rein, LLP
1776 K Street
Washington, DC 20006

Stan Bugner
State Director
Verizon South, Incorporated
1301 Gervais Street, Suite 825
Columbia, South Carolina 29201

Bruce Hurlbut, Esquire
Windstream Communications, Inc.
4001 Parham
Little Rock, AR 72212


Rebecca W. Martin, Legal Assistant
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

February 17, 2010

Columbia, South Carolina